

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1040 be amended to read as follows:

- 1 Page 2, between lines 40 and 41, begin a new paragraph and insert:
- 2 "SECTION 2. IC 30-4-3.5-1, AS AMENDED BY P.L.61-2008,
- 3 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2009]: Sec. 1. (a) Except as otherwise provided in ~~subsection~~
- 5 **subsections (b) and (d)**, a trustee who invests and manages trust assets
- 6 owes a duty to the beneficiaries of the trust to comply with the prudent
- 7 investor rule set forth in this chapter.
- 8 (b) The prudent investor rule, a default rule, may be expanded,
- 9 restricted, eliminated, or otherwise altered by the provisions of a trust.
- 10 A trustee is not liable to a beneficiary to the extent that the trustee
- 11 acted in reasonable reliance on the provision of the trust.
- 12 (c) This chapter applies to a trustee or escrow agent, acting as
- 13 fiduciary, of:
- 14 (1) a perpetual care fund or an endowment care fund established
- 15 under IC 23-14-48-2;
- 16 (2) a prepaid funeral plan or funeral trust established under
- 17 IC 30-2-9;
- 18 (3) a funeral trust established under IC 30-2-10; or
- 19 (4) a trust or escrow account created from payments of funeral,
- 20 burial services, or merchandise in advance of need, as described
- 21 in IC 30-2-13.
- 22 **(d) Except as provided in subsections (e) and (f), the duties of a**
- 23 **trustee with respect to the acquisition or retention of any contract**
- 24 **of insurance on the life or lives of a settlor or a settlor's spouse, or**
- 25 **both do not include the following:**
- 26 (1) **A duty to determine whether a contract of insurance is or**
- 27 **remains a proper investment.**
- 28 (2) **A duty to exercise policy options, including investment**
- 29 **options, available under a contract of insurance.**
- 30 (3) **A duty to diversify if a contract of insurance is the sole or**
- 31 **a major asset of a trust.**

1 **A trustee is not liable to any person for not determining whether**
 2 **a contract of insurance is or remains a proper investment, for not**
 3 **exercising policy options, including investment options, available**
 4 **under a contract of insurance, or for not diversifying a trust in**
 5 **which a contract of insurance is the sole or a major asset of the**
 6 **trust.**

7 **(e) With respect to a trust established before July 1, 2009,**
 8 **subsection (d) applies to the trust only if a trust settlor is still living**
 9 **and:**

10 **(1) the trustee of the trust notifies the settlor in writing that**
 11 **subsection (d) will apply to the trust unless the settlor**
 12 **provides to the trustee, less than sixty (60) days after the**
 13 **settlor receives the trustee's notice under this subdivision, a**
 14 **written objection to the application of subsection (d) to the**
 15 **trust; and**

16 **(2) the settlor does not provide to the trustee, less than sixty**
 17 **(60) days after the settlor receives the trustee's notice under**
 18 **subdivision (1), a written objection to the application of**
 19 **subsection (d) to the trust.**

20 **(f) The exclusion of a particular duty under subsection (d) does**
 21 **not apply to a trustee if the trust administered by the trustee**
 22 **specifically provides that the trustee has that duty.**

23 SECTION 3. IC 34-30-2-131, AS AMENDED BY P.L.238-2005,
 24 SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2009]: Sec. 131. (a) IC 30-4-3-1.5 (Concerning actions of a
 26 trustee who does not know that a trust has been revoked or amended).

27 (b) IC 30-4-3-6.5 (Concerning actions of a trustee who does not
 28 know of the happening of an event that affects the trust).

29 (c) IC 30-4-3-11 (Concerning trustees and beneficiaries of a trust in
 30 certain circumstances).

31 **(d) IC 30-4-3.5-1(d) (Concerning trustees and life insurance**
 32 **contracts).".**

33 Renumber all SECTIONS consecutively.

(Reference is to EHB 1040 as printed March 27, 2009.)

Senator ZAKAS